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January 29 Roundtable Update

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**WE ARE NEW YORK'S LAW SCHOOL****N.Y. CENSUS & REDISTRICTING ROUNDTABLE UPDATE****REDISTRICTING****Dennis Walcott Appointed to State Independent Redistricting Commission**

Senate Majority Leader Andrea Stewart Cousins has appointed Queens Public Library President & CEO Dennis Walcott to serve on the Independent Redistricting Commission (IRC), succeeding Dr. John Flateau who passed away last month. Walcott chaired the 2022-2023 New York City Districting Commission and was widely praised in his role leading the commission through its process to develop a new 51 district city council map.

Why Aren't State Senate Districts Being Redrawn?

While a new congressional map is expected for this year's congressional elections (and to be used through the 2030 elections), it's often asked why the state senate map isn't also being redrawn. Last year, the *Nichols* Assembly challenge resulted in a commission drawn map largely approved by the legislature.

However, the state senate map drawn by the state court in the Steuben County-based *Harkenrider* case remains in place. There is no litigation pending seeking to have the Independent Redistricting Commission (IRC) draw a new Senate map to submit to the legislature.

The original petition in *Hoffmann v. Independent Redistricting Commission (IRC)* sought to compel the IRC to submit to the legislature a second plan (or set of plans) for the congressional districts *and* the state legislative districts (State Senate and State Assembly). However, less than a month later, the petitioners asked the court to allow them to amend their petition to remove the state legislative districts. In their request, the *Hoffman* plaintiffs explained that in addition to having a particular interest in their congressional districts, they also understood that the *Nichols v. Hochul* Assembly remapping litigation was underway and could result in an order requiring the IRC to comply with its constitutional redistricting duties as to the State Assembly districts. They reasoned that removing the state legislative districts from their petition would "avoid the possibility of duplicative and conflicting proceedings in different courts."

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Last month, the state Court of Appeals held in the *Hoffmann* appeal that “because the 2014 constitutional amendments limited court-ordered districts to only what is required to remedy a violation of law, *Harkenrider* cannot be read to hold that courts may create decade-long redistrictings or that we ordered Supreme Court to do so. Accordingly, the existing judicially drawn congressional districts (were) limited to the 2022 election.” The court subsequently directed the IRC a new congressional map by February 21st to comply with its constitutional mandate.

As things stand now, we can expect congressional and assembly elections to be run on maps enacted by the legislature and the senate election based on the court drawn map used in 2022. Unless the IRC takes the unlikely step to redraw the senate map on its own, a new lawsuit would need to be filed to compel the IRC and legislature to draw a new senate map. Since petitioning for senate (and all other offices) is set to begin on February 27, it is unlikely any new senate remapping would go into effect until the 2026 election cycle.

LITIGATION**Nassau County Legislative Map Challenge**

Coads et al v. Nassau County- Attorneys for Nassau County have asked the court to stay (or suspend) discovery until the court can rule on a motion to dismiss the challenge to the county’s legislative map. In their filing, county attorneys argue that “(per) the parties’ stipulation entered on January 19, 2024, the deadline for the County and Legislature’s response to Plaintiffs’ discovery demands is February 2, 2024. Failing to temporarily stay discovery may cause discovery to come due during briefing of the motion, thus mooting the motion.

AROUND THE NATION

Wisconsin: the Wisconsin Supreme Court found the state’s redistricting maps as unconstitutional and set a February 1st deadline to draw and pass new maps. Governor Tony Evers promised to veto a redistricting map proposal that the Assembly passed last Wednesday because this map would reduce the number of GOP incumbents who would be paired. The vote on the remedial maps was 63-35, with all Republicans in support and all Democrats against. This veto will pass the power to the Wisconsin Supreme Court to install new redistricting maps. The Court will now review six submitted maps, of which Democrats would fare better than with the Assembly’s maps. Republicans currently have a 22-11 supermajority in the Senate and a 64-35 majority in the Assembly under maps drawn in 2011.

Florida: On January 24th, the Florida Supreme Court voted 6-0 to take up a challenge to the constitutionality of a congressional redistricting plan. The

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case centers on a North Florida district, Congressional District 5 (CD-5), which was overhauled during an April 2022 special legislative session. The plaintiffs argue the overhaul violated the 2010 Fair Districts Amendment, which barred drawing districts that would “diminish” the ability of minorities to “elect representatives of their choice.”

A Leon County circuit judge ruled in favor of the plaintiffs, but the 1st District Court of Appeals overturned that decision and ruled in favor of the state. The plaintiffs argued that the court’s decision violated Supreme Court precedents in redistricting cases, including a case that led to the former design of CD-5. A separate challenge to the redistricting plan is pending in federal court and involves federal constitutional issues. The state case will likely not be resolved before candidate-qualifying deadlines and could remain in effect for the November congressional elections.

Michigan: The U.S. Supreme Court rejected a request from the state’s Redistricting Commission to overrule an order to redraw 13 Detroit-area seats in the legislature. The commission challenged a December ruling by a federal appeals court panel that found Michigan’s 2021 redistricting maps were illegally influenced by race. Although nearly 80% of Detroit residents are black, the black voting population in the 13 districts range from 35% to 45%, with one district being as low as 19%. The 2022 midterms—the first election after the new redistricting maps—left Detroit without black representation in Congress for the first time since the early 1950s.

The panel ordered Michigan to redraw 7 state House districts for the 2024 election, with a later deadline for 6 state Senate districts because the senators’ terms do not expire until 2026. A drafted state House map is due by February 2, and the final deadline is March 29th.